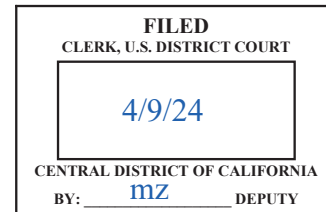


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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA,
WESTERN DIVISION**

TODD R. G. HILL, individually, and as attorney-
in-fact, guardian ad litem to ROES 1-8,
Plaintiff(s),

vs.

THE BOARD OF DIRECTORS, OFFICERS
AND AGENTS AND INDIVIDUALS OF THE
PEOPLES OF THE COLLEGE OF LAW;

Defendant(s).

Case No.: 2:23-CV-01298-JLS-BFM

**MOTION IN OPPOSITION TO
DEFENDANTS' MOTION UNDER F.R.C.P.
12(B)(6) TO DISMISS PLAINTIFF'S
SECOND AMENDED COMPLAINT WITH
PREJUDICE (see DCKT #122);
MEMORANDUM OF POINTS AND
AUTHORITIES**

NO ORAL ARGUMENTS

The Hon. Josephine L. Staton
Courtroom 8A, 8th Floor
Magistrate Judge Brianna Fuller Mircheff
Courtroom 780, 7th Floor

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Summary

The Plaintiff (“Plaintiff or “Todd”) challenges the motion to dismiss filed by Defendants Jessica Viramontes and Carol Deupree. In the present document, Plaintiff provides new arguments, points and authorities as well as summarizes arguments previously presented in earlier oppositions to similar motions brought by the Defendants in an effort to facilitate the Courts review.

Defendants inappropriately assert, almost ritualistically, that the mere "length" of the Second Amended Complaint (SAC), in isolation or relative to previous amendments, proves excessive verbosity. This argument overlooks the necessity of detailing the actions of approximately 60 defendants. The critique that most allegations do not directly pertain to each individual defendant fails to recognize the complaint's structured clarity. Despite its comprehensive scope, the SAC discusses each defendant's conduct succinctly and distinguishes claims against individual defendants with precision, thus negating claims of prolixity for adjudicative purposes.

1 Defendants motions appear designed to circumvent the basic precept that "the primary objective of
2 the law is to obtain a decision on the merits of any claim; and that a case should be tried
3 substantially on the merits rather than technically on the pleading." Rennie & Laughlin, Inc. v.
4 Chrysler Corp., 242 F.2d 208, 213 (9th Cir. 1957) (citing DeLoach v. Crowley's, Inc., 128 F.2d 378,
5 380 (5th Cir. 1942)). 15. See, e.g., Rennie & Laughlin Inc., 242 F.2d at 213.

7 If the relevant motion(s) is/are treated as a motion for Summary Judgment, standards generally
8 applied at the final stage of Rule 12(b)(6) proceedings, Todd requests the same standards are applied
9 in the determination of Rule 12(c) motions for judgment on the pleadings. (See, e.g., United States
10 v. Wood, 925 F.2d 1580, 1581 (7th Cir.1991)) If the Court does consider this motion as one for
11 Summary Judgement, Plaintiff asks that the Court treat the motion in part as a motion for Summary
12 Judgement under F.R.C.P. Rule 12(c) and under Federal Rule of Civil Procedure Rule 56.

14 Alternatively, the motion(s) should be dismissed because the Defendants' claims lack specificity
15 regarding Rule 8 violations for each Defendant, showing their arguments are inadequate.

17 The Plaintiff argues that the Defendants, fully aware of longstanding issues through regulatory
18 notices, have chosen not to seek a "more definitive statement" under F.R.C.P. 12(e) related to the
19 instant cause of action. Their reliance solely on F.R.C.P. 12(b)(6), especially given their legal
20 expertise and operational roles in a law school, appears strategically aimed at gaining an unfair
21 advantage, despite a more reasonable resolution path proposed by the Plaintiff.

23 Defendants parroted and "mantra-like" claim that the "length" of the SAC, by itself or in context to
24 prior amended complaints as sufficient for demonstrating prolixity. Here, the conduct of some 60
25 defendants are covered in the complaint. The fact that most of the allegations, in relationship to an
26 individual Defendant, are not necessarily related to that Defendant does not render the document
27

1 “prolix” for purposes of adjudication because the conduct is identified and discussed concisely and
2 the claims pertaining to each Defendant are clearly labeled.

3
4 Todd's complaint should not be deemed "prolix" under the legal standards set forth in relevant case
5 law. While courts have indeed differentiated between "prolix, confusing complaints" that justify
6 dismissal and lengthy complaints that sufficiently notify defendants of the claims against them, the
7 essence of Todd's complaint aligns with the latter. Drawing from the precedent in *McHenry v.*
8 *Renne*, the court acknowledged the dismissal of complaints that were overly verbose and confusing,
9 mainly due to the challenges they posed in crafting a responsive pleading and the undue burden they
10 placed on the judicial system and litigants. However, Todd's case is more closely aligned with the
11 rulings in *Hearns v. San Bernardino Police Department* and *Johnson v. Napa Valley Wine Train,*
12 *Inc..*

13
14 In *Hearns*, the Ninth Circuit vacated a dismissal order for a complaint that was long but otherwise
15 "logically organized" and outlined "enumerated legal claims" with clear indications of the liable
16 defendants and the legal bases for each claim. This demonstrates that length alone is not a
17 disqualifier if the document maintains logical organization and clarity in its allegations. Similarly, in
18 *Johnson*, the court found that the defendants' request for a more definitive statement actually
19 underscored their understanding of the nature of each claim and their ability to mount a defense,
20 indicating that the complaint, despite its detail, effectively communicated the necessary information.

21
22
23 Todd's complaint, by focusing on specific allegations against each defendant and maintaining a
24 clear, organized structure, does not suffer from the issues of prolixity that warrant dismissal. The
25 complaint might be extensive, covering conduct across multiple defendants, but it mirrors the
26 organizational clarity and specificity seen in *Hearns* and *Johnson*. Each claim against the
27 defendants is clearly labeled and articulated, ensuring that defendants are adequately put on notice.
28

1 The necessity to address multiple defendants' conduct in a single complaint naturally extends its
2 length but does not inherently make it confusing or burdensome to respond to.

3
4 Therefore, based on the precedent and the nature of Todd's complaint—its logical organization,
5 specific allegations, and clear identification of defendants and legal grounds—it should be regarded
6 as providing sufficient notice to the defendants without crossing into the territory of being
7 excessively verbose or confusing. This maintains the balance between ensuring comprehensive legal
8 claims are heard without imposing undue burdens on the court or defendants in their response
9 efforts.

10
11 Defendants do not present viable, if any, arguments in contravention to Plaintiffs assertion that the
12 SAC must be evaluated in context to F.R.C.P. Rule 9. Rule 9(b) provides that fraud must be pled
13 with particularity and the courts have held that Rule 9(b) must be applied concurrently with Rule 8.
14 (See, e.g., *In re Longhorn Securities Litigation*, 573 F. Supp. 255, 263 (W.D. Okla. 1983).)

15
16 The structure and content of the Second Amended Complaint contravenes Defendant's arguments
17 for "prolixity" and underscores the commitment to justice and adherence to legal standards
18 demonstrated by the Plaintiff throughout this case.

19
20 **Factual Allegations**

21 Plaintiff, Todd Hill ("Todd"), enrolled into the People's College of Law ("PCL") in 2019, a "fixed
22 facility" registered law school.

23 Todd alleges he was the victim of an unlawful scheme within the institution, including failures to
24 make mandated disclosures, failure to provide accurate transcripts and failure to award the correct
25 number of earned units. After the institutions failure to address these and other issues timely, Todd
26 reported the misconduct widely to the school's administration and appropriate authorities; he turned
27

1 to the State Bar, trusting in its legislated commitment to public protection and its mandate as the
2 sole regulator responsible for post-secondary legal education services.

3
4 Todd's further alleges PCL's administration retaliated against him and the State Bar failed to timely
5 intervene or protect him. Subsequently, Todd learned that there were policies in place that
6 communicated to predatory schools that the State Bar would not intervene in conflicts between
7 students and their institutions. This policy he claims contradicts the core principles of the State Bar's
8 public protection mandate and is inappropriate for an entity tasked with overseeing legal education.

9
10 People's College of Law was placed on probation for longstanding issues of noncompliance by the
11 State Bar of California December 2, 2022. The alleged conduct of the Defendants is contiguous, at
12 least in part, with the State Bar's findings of PCL's noncompliance.

13 **Procedural Background**

14 **Abbreviated Chronology of the Case and Plaintiff's Efforts for Redress**

15
16 The Court dismissed the Plaintiff's First Amended Complaint on June 7, 2023, granting 21 days to
17 file a Second Amended Complaint ("SAC"). With the exception of Defendant Spiro, no other
18 defendant had accepted service or notice at the time.

19
20 On September 19, 2023, the Honorable Josephine L. Staton, United States District Judge of the
21 United States District Court for the Central District of California, Western Division, granted the
22 Plaintiff's motion to set aside the judgment of dismissal and allowed the filing of a Second
23 Amended Complaint.

24
25 On September 20, 2023, Plaintiff filed a Second Amended Complaint ("SAC") at Docket No. 55
26 (<https://ecf.cacd.uscourts.gov/doc1/031140872478>).

1 On December 26, 2023, Plaintiff filed for judicial notice under FRE 201 the document "Action on
2 Inspection Report, Probationary Status, and Termination of Registration - Peoples College of Law",
3 a comprehensive review and report concerning the noncompliance of Peoples College of Law
4 (PCL) with the Unaccredited Law School Rules and Guidelines. This document served as a critical
5 piece of evidence in support of facts for an F.R.E. 201 request for Judicial Notice due to its detailed
6 account of the law school's operational and educational deficiencies, noncompliance issues, and the
7 administrative actions taken in response. Plaintiff submitted and attached as EXHIBIT 201A,
8 totaling 135 pages, with a declaration in conformance with 28 U.S.C. § 1746 that it is a true and
9 accurate copy of the document. (See Docket #102).
10

11 On March 8, 2024, Defendant's DEUPREE and VIRAMONTES filed a Motion to Dismiss (at
12 Docket #122).
13

14 **The Plaintiff's Position in Context**

15
16 **The Second Amended Complaint (SAC) represents the initial notification to all defendants,**
17 **excluding Defendant Spiro, of the legal claims against them.** This aspect of the litigation process
18 underscores the inappropriateness of dismissing the SAC with respect to these defendants at this
19 early stage. In legal practice, the principle of fair notice is paramount, ensuring that defendants are
20 adequately informed of the allegations against them to prepare a meaningful defense. The SAC
21 fulfills this critical function by articulating the claims, the factual basis for these claims, and the
22 legal theories underpinning the plaintiff's arguments.
23

24 Dismissal at this juncture would contravene the judicial system's commitment to procedural fairness
25 and due process, particularly given that, for the majority of defendants, the SAC constitutes their
26 first introduction to the case's substance. The courts have consistently upheld the importance of
27
28

1 allowing the litigation process to unfold where parties are only beginning to engage with the claims
2 and defenses. Premature dismissal, especially before defendants have had the opportunity to
3 respond substantively, deprives them of the chance to contest the allegations on their merits.

4
5 Moreover, the precedent established in legal jurisprudence supports the notion that initial pleadings
6 should be approached with a degree of leniency, allowing cases to proceed to discovery and further
7 stages where the facts can be fully examined and adjudicated. Dismissing the SAC, absent a clear
8 and justifiable reason, would preemptively cut short this process, undermining the judicial system's
9 role in resolving disputes thoroughly and fairly.

10
11 Therefore, given that the SAC serves as the first formal notice for all defendants except Defendant
12 Spiro, dismissing the complaint at this stage is not only premature but also inconsistent with
13 principles of justice and fairness that guide our legal system.

14
15 **I. Plaintiff's Complaint Satisfies Rule 12(b)(6)**

16
17 Plaintiff asserts the SAC's compliance with Rule 12(b)(6) is supported by caselaw. Here, plaintiff
18 requests the Court consider *Tan v. Quick Box, LLC*, Case No.: 3:20-cv-01082-H-DEB (S.D. Cal.
19 Dec. 8, 2020).

20
21 In *Tan*, a plaintiff brought a class action complaint against multiple defendants for an alleged
22 fraudulent scheme in which the Defendants allegedly used fake endorsements or reviews and made
23 other misrepresentations to induce consumers into purchasing beauty and skincare products. The
24 Defendants in the case allegedly made it difficult or impossible to return the products or receive a
25 refund and operated "false front" websites to mislead banks and credit card companies investigating
26 chargebacks.
27
28

1 Similarly to the current case, the Defendants moved to dismiss Plaintiff's complaint pursuant to: (i)
2 Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief can be
3 granted, and for violating the requirements of (ii) FRCP 8(a) and FRCP 8(a)(2), for failure to state a
4 short and plain statement of the claim. (see Docket No. 122 as exemplar).
5

6
7 Similarly to the current case, in *Tan* there were a substantial number of motions to dismiss before
8 the Court in the matter and the majority of motions submitted by the Defendants respectively
9 contained sections that were nearly identical.

10
11 Unlike *Tan*, here the Defendants have not sought to raise issues related to Federal Rule of Civil
12 Procedure 9 compliance, including Rule 9(b)'s requirement that claims grounded in fraud and RICO
13 be pleaded with sufficient particularity.
14

15
16 In *Tan*, the Court used the following framework to decide compliance with Rule F.R.C.P. 12(b)(6):
17

18 Federal Rule of Civil Procedure 8(a) requires that a complaint contain "a short and plain
19 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).
20 A defendant may move to dismiss a complaint for failing to state a claim upon which relief
21 can be granted under Rule 12(b)(6). "Dismissal under Rule 12(b)(6) is appropriate only
22 where the complaint lacks a cognizable legal theory or sufficient facts to support a
23 cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104
24 (9th Cir. 2008). To survive a 12(b)(6) motion, a plaintiff must plead "enough facts to state a
25 claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
26 (2007). A claim is facially plausible when a plaintiff pleads "factual content that allows the
27
28

1 court to draw the reasonable inference that the defendant is liable for the misconduct
2 alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In reviewing the plausibility of a
3 complaint, courts "accept factual allegations in the complaint as true and construe the
4 pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire &*
5 *Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Nonetheless, courts do not "accept as
6 true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
7 inferences." *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (quoting
8 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)). The Court also need
9 not accept as true allegations that contradict matters properly subject to judicial notice or
10 allegations contradicting the exhibits attached to the complaint. *Sprewell*, 266 F.3d at 988.
11
12

13
14 Where a motion to dismiss is granted, "leave to amend should be granted 'unless the court
15 determines that the allegation of other facts consistent with the challenged pleading could not
16 possibly cure the deficiency.'" *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir.
17 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.
18 1986)). In other words, where leave to amend would be futile, the Court may deny leave to
19 amend. See *DeSoto*, 957 F.2d at 658; *Schreiber*, 806 F.2d at 1401.
20

21 **II. Defendants filing of the motion related to 12(b)(6) is misleading.**

22

23 Plaintiff has prior noticed the court of the likelihood of significant information asymmetry in this
24 matter, as evidenced by the release of reports and other information discussed above and below not
25 available at the time of the filing of the SAC.

26 Plaintiff has previously acknowledged that he is not in possession of all of the facts and has
27 requested leave for reasonable discovery.
28

1 Defendants' arguments avoid Plaintiffs prior requests to be allowed discovery as well as evidence
2 provided by the State Bar, the institutions primary regulator, submitted for Judicial notice under
3 F.R.E. 201 on December 26, 2023 (at Docket No. 102), which includes specific details related to the
4 involvement of these specific Defendants unavailable to the Plaintiff at the time of filing of the
5 SAC.

6
7 "[E]ven if Defendant were correct that Plaintiff's claims must be dismissed as alleged, the Court
8 would consider whether leave to amend should be granted, rendering [Defendant's] motion not
9 dispositive."; Gray, 133 F.R.D. at 40 ("Defendants have done no more than to argue in conclusory
10 fashion that their motions to dismiss . . . will succeed"). *Graham v. Cent. Garden & Pet Co.*, 22-cv-
11 06507-JSC, at *2 (N.D. Cal. Feb. 16, 2023)

12
13 What is important here is that the above claims are clearly stated in relationship to the individual
14 Defendants and reasonable notice is given to those Defendants related to the claims made against
15 them in the SAC; Defendants have not provided sufficient arguments nor demonstratives in context
16 to the individual subject Defendants to adequately indicate that Rule 8 has, in fact, been violated in
17 this circumstance.

18
19 **III. Defendants motion fails to demonstrate unfairness or unreasonable burden.**

20
21 In this opposition to the 12(b)(6) motion requests the court consider the Supreme Court's rationale
22 in *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005), where it underscored the importance of
23 streamlining issues at the pleading stage to prevent unwarranted discovery costs and the settlement
24 of baseless lawsuits. The Court advocated for allegations to be sufficiently detailed to suggest the
25 plausibility of claims, such as conspiracy, to forestall the significant expenses associated with
26 discovery in instances lacking a "reasonably founded hope" of uncovering relevant evidence.
27
28

1 Applying this principle to our case, the specific nature of the complaints, especially those
2 concerning a particular plaintiff, inherently limits the scope of potential discovery. This tailored
3 approach negates the Defendants' implied premise of facing an undue discovery burden. The
4 specificity of our allegations ensures that any discovery conducted will be directly relevant and
5 essential to the adjudication of our claims, thereby minimizing the risk of unnecessary and extensive
6 document reviews, overbroad electronic data searches, and the conducting of numerous, possibly
7 irrelevant depositions.
8

9
10 Additionally, the Supreme Court's guidance in *Dura Pharmaceuticals* and the specific, aligned
11 scope of the instant allegations strongly suggest the implicit argument for an undue discovery
12 burden by the Defendants is unfounded. The pleadings are crafted to ensure that the discovery
13 process remains a tool for revealing truth and supporting the litigation of meritorious claims; This
14 approach not only aligns with the Supreme Court's directives but also serves the interests of justice
15 by focusing on the efficient resolution of genuine disputes.
16

17
18 Todd argues that it is unclear that his complaint is in fact "longer than necessary." (*see Hearn*
19 *v. San Bernardino Police Dep't.*, [530 F.3d 1124, 1132](#) (9th Cir. 2008) (vacating a dismissal order
20 because the complaint, though longer than necessary, was "logically organized" and presented
21 "enumerated legal claims, each of which list[ed] the liable Defendants and legal basis
22 therefor"); *Johnson v. Napa Valley Wine Train, Inc.*, [No. 15-cv-04515-TEH, 2016 WL 493229,](#)
23 [*4](#) (N.D. Cal. Feb. 9, 2016))
24
25

26 Here, Plaintiff references the prior request for judicial notice of a State Bar report (see Docket #102,
27 prior mentioned above) detailing numerous findings of noncompliance that spans a shorter
28

1 timeframe but contains 135 pages including conduct allegations of only a fraction of the
2 Defendants, including VIRAMONTES and DEUPREE. Plaintiff, as argued above and below, has
3 sought to present the issues in a manner efficient for the Courts consideration and review.
4

5 **IV. Defendant's Motion Fails to Address the Merits.**

6 Defendants fail to provide an evidentiary-based argument to undermine Plaintiffs' probability of
7 success on the merits. Defendant's declaration only discusses prior "pleading deficiencies" or
8 procedural issues questionably attributable to the Plaintiff, e.g., whether the "filing" or "lodging" of
9 the Second Amended Complaint demonstrates Plaintiff's "defiant" stance in filing.
10

11 Defendant's attack fails to limit its review, isolate specific claims nor substantively address the
12 adequacy of Plaintiffs' pleadings. Defendant's claims fail to account for the ongoing and present
13 nature of the issues, conducted in real time, that include personnel changes (Dean Pomposo is
14 purported to have left as recently as December 2023, with an interim Dean Lobos serving since
15 September 2023); and the recent termination of the school's registration for "noncompliance" by the
16 State Bar (see Docket #102, Exhibits 201A and 201B).
17

18
19 Motions under Fed. R. Civ. P. ("F.R.C.P.") Rule 12(b)(6) "must be made before pleading if a
20 responsive pleading is allowed." Fed. R. Civ. P. 12(b); see also *Elvig v. Calvin Presbyterian*
21 *Church*, 375 F.3d 951, 954 (9th Cir. 2004). As the Ninth Circuit has noted, "[a] fundamental
22 tenet of the Federal Rules of Civil Procedure is that certain defenses under Fed. R. Civ. P. 12
23 must be raised at the first available opportunity or, if they are not, they are forever waived."
24 *American Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1106 (9th Cir. 2000).
25 An answer to a complaint is a responsive pleading. See Fed. R. Civ. P. 7(a)(2).
26
27
28

1 Plaintiff further argues that the motions do not properly isolate the represented defendants and
2 provide insufficient examples of “prolixity” or other issues as they relate to the specific defendants
3 and are thus overly broad. The issue here is whether the claimed insufficiency(ies) render the SAC
4 unreasonably difficult for these Defendants or the reasonable person to issue response.
5

6 Here Defendants have not articulated or demonstrated the inability to file a substantive response.

7 Given the Defendant’s request to have the entirety of the SAC dismissed with prejudice, the request
8 here strongly infers “willful avoidance” more than a factual inability for a reasonable person to
9 respond to the claims in good faith.
10

11 **V. Plaintiff's Complaint Not Violative of Rule 8(a)**

12 Plaintiff argues that Defendants contention that the complaint is excessively long, unnecessarily
13 complex or is otherwise unfair or unreasonable to respond to is specious and erroneous. Generally,
14 the Defendants accuse the complaint of “prolixity”.
15

16 Plaintiff has previously challenged this characterization of the complaint, arguing that it is not
17 unorganized, conclusory, or difficult to understand. (Doc. No. 123) Todd also contends that the
18 Ninth Circuit has rejected the length of a complaint as an independent ground for dismissal under
19 Rule 8(a). (which see *Tan v. Quick Box, LLC*, Case No.: 3:20-cv-01082-H-DEB, at *43-44 (S.D.
20 Cal. Dec. 8, 2020) (“The general rule is that “verbosity or length is not by itself a basis for
21 dismissing a complaint based on Rule 8(a).” *Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124,
22 1131 (9th Cir. 2008). Rule 8(a) may be violated by “a pleading that was needlessly long, or a
23 complaint that was highly repetitious, or confused, or consisted of incomprehensible rambling.”
24 *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011). Previous
25 complaints dismissed under Rule 8(a) have been described by courts as “argumentative, prolix,
26 replete with redundancy, and largely irrelevant,” *McHenry v. Renne*, 84 F.3d 1172, 1177-80 (9th Cir.
27
28

1 1996), "confusing and conclusory," Hatch v. Reliance Ins. Co., 758 F.2d 409, 415 (9th Cir. 1985),
2 "verbose, confusing and almost entirely conclusory," Nevijel v. North Coast Life Ins. Co., 651 F.2d
3 671, 674 (9th Cir. 1981), and "confusing, distracting, ambiguous, and unintelligible," Schmidt v.
4 Herrmann, 614 F.2d 1221, 1224 (9th Cir. 1980). The important inquiry is whether the complaint is
5 intelligible and logically organized, and sufficiently informs defendants of the allegations and
6 claims made against them; lengthiness alone is insufficient to give rise to dismissal under Rule 8(a).
7 See Hearn, 530 F.3d at 1131-32 (holding that while the complaint "contain[ed] excessive detail," it
8 was "intelligible and clearly delineate[d] the claims and the Defendants against whom the claims are
9 made" and thus did not violate Rule 8(a)).")
10
11

12 **Motion Fails on the Merits for Summary Judgement Application**

13
14 Alternatively, 12(b)(6) motions to dismiss are sometimes treated as a motion for judgment on
15 the pleadings. Aldabe v. Aldabe, 616 F.2d 1089, 1093 (9th Cir. 1980); Elvig, 375 F.3d at 954.
16 "A judgment on the pleadings is properly granted when, taking all the allegations in the
17 pleadings as true, [a] party is entitled to judgment as a matter of law." Lyon v. Chase Bank
18 USA, N.A., 656 F.3d 877, 883 (9th Cir. 2011) (quoting Dunlap v. Credit Prot. Ass'n, L.P., 419
19 F.3d 1011, 1012 n.1 (9th Cir. 2005); Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708,
20 713 (9th Cir. 2001)). If the Court elects to convert Defendants' untimely motion to dismiss into
21 a judgment on the pleadings, the motion should be denied on the merits because the pleading
22 begs for numerous fact determinations.
23

24 **A. The Court Must Consider the Complaint in Its Entirety when Evaluating a Motion to**
25 **Dismiss for Failure to State a Claim.**
26

27 Defendants asserts that all sixteen counts in the Complaint are conclusory and fail to state claims
28 upon which relief can be granted. To support this argument, Defendants ask that the Court ignore

1 all of the paragraphs of the Complaint which Defendants state do not contain sufficient factual
2 detail. Here, a Defendant has responded to an earlier amended complaint.

3
4 A defendant may move for dismissal when a plaintiff "fails to state a claim upon which relief can be
5 granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must contain
6 sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face.
7 *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). A claim has facial plausibility when the plaintiff
8 pleads factual content that allows the court to draw the reasonable inference that the defendant is
9 liable for the misconduct alleged. *Id.* at 678. Although the court must accept as true a complaint's
10 well-pleaded facts, conclusory allegations of law and unwarranted inferences will not defeat an
11 otherwise proper Rule 12(b)(6) motion. *Vasquez v. Los Angeles County*, 487 F.3d 1246, 1249 (9th
12 Cir. 2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A plaintiff is
13 obligated to provide grounds for their entitlement to relief that amount to more than labels and
14 conclusions or a formulaic recitation of the elements of a cause of action. *Bell Atl. Corp. v.*
15 *Twombly*, 550 U.S. 544, 545 (2007). "[T]he pleading standard Rule 8 announces does not require
16 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-
17 harmed-me accusation." *Iqbal*, 556 U.S. at 678. Dismissal under Rule 12(b)(6) "can [also] be based
18 on the lack of a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
19 Cir. 1988).

20 21 22 **Counterarguments to Defendant's Opposition**

23
24
25 In an earlier decision the Court cites *McHenry v. Renne*, 84 F.3d 1172, 1177-78 (9th Cir. 1996) as
26 definitive of the Court's authority to dismiss. The Defendants have also cited *McHenry*.

1 Here, Plaintiff humbly asks that the Court consider *Briggs v. Montgomery*, as is discussed below,
2 which contravenes *McHenry* in this context.

3
4 In *Briggs*, the Court declined to require Plaintiffs to amend their complaint, which it acknowledged
5 was “lengthy and includes some extraneous background information that is not material to the
6 claims for relief, the Court will allow this action to proceed forward on the FAC. See *Hearns*, 530
7 F.3d at 1127 (district court abused its discretion by dismissing FAC with prejudice solely because of
8 its length; “although each [complaint] set forth excessively detailed factual allegations, they were
9 coherent, well-organized, and stated legally viable claims”); contra *McHenry v. Renne*, 84 F.3d
10 1172, 1177-78 (9th Cir. 1996) (affirming district court's dismissal of complaint with prejudice where
11 complaint was “argumentative, prolix, replete with redundancy, and largely irrelevant,” consisted
12 “largely of immaterial background information,” and “Despite all the pages, requiring a great deal of
13 time for perusal, one cannot determine from the complaint who is being sued, for what relief, and
14 on what theory, with enough detail to guide discovery.”); *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d
15 671, 674 (9th Cir. 1981) (affirming district court's dismissal where complaint was “verbose,
16 confusing and conclusory”). Here, despite its length, “[t]he [FAC] is logically organized, divided
17 into a description of the parties, a chronological factual background, and a presentation of
18 enumerated legal claims, each of which lists the liable Defendants and legal basis therefor.” *Hearns*,
19 530 F.3d at 1132. While it does contain some “excessive detail”, the FAC is “intelligible and clearly
20 delineate[s] the claims and the Defendants against whom the claims are made.” *Id.* *Briggs v.*
21 *Montgomery*, No. CV-18-02684-PHX-EJM, at *27-28 (D. Ariz. June 18, 2019)

22
23
24
25 **A. Addressing Alleged Procedural Missteps**
26 **Refuting Defendant’s Claims of Rule Violations**
27
28

1 The Plaintiff, a pro se litigant in this matter, acknowledges the Defendant's claims of procedural
2 non-compliance and provides evidence of adherence to relevant legal standards as discussed above
3 related to EXHIBIT A.

4
5 **B. Compliance with the April 5, 2023 Order**

6 The Plaintiff has demonstrated adherence to the Court's directives, including its in the April 5 order,
7 with each amendment in the complaint made in good faith and with the intention to clarify the
8 application of the facts and strengthen the legal arguments in regard to the Defendants.

9 Plaintiff has acknowledged that he is not in possession of all of the facts and has requested leave for
10 discovery. In addition, only one actual answer has been filed, by Mr. Spiro, related to a prior
11 complaint.

12 Mr. Spiro, having filed a similar Motion for dismissal prior, has alleged several issues as
13 "demonstrative of non-compliance" that are in fact commonly used in pleadings for clarity and
14 efficiency, including:

15
16
17
18 a. Incorporation of Antecedent Allegations by Reference:

19 Response: The legal device of "incorporation by reference" is often scrutinized for its potential to
20 signal a "shotgun" pleading, where a complaint fails to clearly articulate claims, leading to
21 confusion and procedural inefficiencies. However, in Todd's case, the strategic use of incorporation
22 by reference is not only justified but necessary due to the complexity of the allegations and the
23 varied roles of the defendants. This approach allows for a streamlined and coherent presentation of
24 claims that are intricately linked to the specific factual circumstances and legal duties pertinent to
25 each defendant.

1 The SFAC's practice of incorporating earlier allegations into each cause of action is a standard
2 procedural tool used to provide a comprehensive and coherent narrative, especially in complex
3 cases involving multiple defendants and extended timelines.

4
5 Todd's complaint delineates breaches of duty across a spectrum of defendants, each with distinct
6 roles and responsibilities, such as school deans, board directors, and administrative agents acting
7 "ultra vires." This variance in capacity necessitates a nuanced approach to alleging negligence,
8 which inherently requires establishing "duty, breach of duty, causation, and damages." By
9 incorporating by reference, Todd efficiently connects the detailed factual allegations to the legal
10 claims against each defendant, avoiding redundancy while ensuring that each claim is substantiated
11 with the necessary factual and legal grounding.
12

13 Furthermore, Todd's use of incorporation by reference aligns perfectly with the construction of his
14 pleadings. The nature of his causes—ranging from negligence to civil rights violations and RICO
15 claims—demands a method of pleading that captures the complexity of the conduct and the
16 interconnectedness of the defendants' actions. This method allows Todd to articulate a coherent
17 narrative that demonstrates how the varied, yet specific, breaches of duty by different defendants
18 contribute to the overarching legal harms he alleges.
19

20 Additionally, Todd's argument that the unremedied conduct has led to retaliation and sustained civil
21 rights violations, underpinning his RICO claims, emphasizes the appropriateness of the pleading
22 style. The assertion that the institution's viability in the marketplace is contingent upon "deliberate
23 and unfair market regulation" demonstrates the complexity of the case, which strict interpretations
24 of Rule 8 may not accommodate.
25

26 Todd's application of incorporation by reference, rather than indicating a "shotgun" approach,
27 exemplifies a tailored method of pleading that facilitates clarity and judicial efficiency by directly
28

1 linking detailed allegations to specific legal claims. This approach assists the court and assures the
2 defendants are provided with a clear, comprehensive understanding of the claims, the factual
3 allegations supporting them, and the legal theories upon which Todd seeks relief.

4
5 Use of the Term 'Defendants':

6 Response: While the SFAC does use the term “Defendants” in a collective manner, this is done for
7 clarity and efficiency, given the large number of defendants involved. However, the SFAC goes to
8 great lengths to specify the actions and roles of individual defendants where necessary, particularly
9 in the detailed descriptions preceding the causes of action. For example, in the paragraphs leading
10 up to the first cause of action, there is a concerted effort to delineate each defendant's specific
11 actions and roles, thereby providing the necessary specificity required by the April 5th Order. The
12 cited paragraph 242 in Mr. Spiro’s motion (and its equivalent in the First Amended Complaint) is
13 part of a broader narrative that, when read in full, provides clear distinctions among the roles and
14 actions of the various defendants. The SAC has sought to create further clarifications and
15 distinctions in this area. Presumably, as additional facts become available, further clarity will be
16 achieved.
17

18
19 b. Compliance with the Court's Directives:

20 Response: The SAC is a conscientious effort to comply with the Court's directives, including it’s
21 April 5th, 2023 Order. The detailed nature of the SAC addresses the Court's concerns by providing a
22 clearer, more comprehensive account of the claims and the involvement of each defendant. This
23 approach ensures that the defendants are adequately informed of the allegations against them,
24 thereby facilitating a more effective and efficient response and defense.
25

26 D. Contextual Understanding:
27
28

1 Response: The nature and complexity of the case necessitate a detailed and comprehensive
2 pleading. The SAC's structure, while extensive, is designed to provide a complete and coherent
3 narrative essential for understanding the complex interactions and alleged misconduct over an
4 extended period. It is designed to assure the Court of an active and viable controversy.
5

6 **Demonstrating Conformity with the Court's Directions**

7 Todd has voluntarily removed defendants where he has found or acknowledged valid issues.
8

9 **C. Plaintiff's Position in Regard to Length and Scope**

10
11 **Efficiency in Presentation:** Despite its length, the complaint efficiently organizes and presents the
12 information. The breakdown of the document — 5 pages for the caption, 8 pages delineating each
13 defendant and their relationships, 1 page for jurisdiction and venue, factual allegations beginning on
14 page 15, and the first of 16 causes of action starting on page 53 — demonstrates an organized
15 approach that aids in the clarity and understanding of the case. The end of the sixteenth cause
16 terminates with the perjury affidavit on page 121. A simple review shows that each cause is argued
17 on average in ~4 pages.
18

19 After the cause pleadings, Plaintiff provides 8 relevant exhibits (totaling 68 pages, from pages 122
20 to 190), marked Exhibits A through H, which include various copies of documents including:
21 inaccurate transcripts and signed certifications by Mr. Spiro to the State Bar (Exhibit A, pages 122-
22 131); relevant email chains (Exhibit B, pages 132-138 and Exhibit C, pages 139-154); documents
23 related to Plaintiff's search and attempts to obtain alternative remedy (Exhibit D, pages 155-161); a
24 report issued by the State Bar of California demonstrative of various issues as well as the Plaintiff's
25 probability of harm (Exhibit E, pages 162-179 and Exhibit F, pages 180-184); additional
26
27
28

1 “unofficial” transcripts demonstrative of Defendant’s failure to timely cure (Exhibit D, pages 185-
2 188); and a copy of Plaintiff’s test passage score results (Exhibit H, pages 189-190).

3
4 **Fulfillment of F.R.C.P. Rule 8 Requirements**

5 The filed complaint adheres to the three primary requirements of Rule 8. It provides:

6 A clear statement of the grounds for the court’s jurisdiction.

7
8 A straightforward, chronologically ordered and detailed statement of the claims showing entitlement
9 to relief.

10 A clear demand for relief, including specific types of relief sought for each of the causes of action.

11
12 Precedent and Judicial Discretion: Courts have recognized that in complex cases involving multiple
13 parties and extensive factual backgrounds, longer pleadings may be necessary and appropriate.

14 Judicial discretion allows for a practical interpretation of “short and plain” in the context of the
15 case’s complexity.
16

17 **Rule 8’s plain language is that a “pleading must contain” clear and concise statements; it does**
18 **not in fact limit the length of the complaint or the number of causes.**

19
20 Although Plaintiff must acknowledge the broad judicial discretion in caselaw where a complaints
21 length has been used to justify its dismissal, here Plaintiff argues that the approach taken is not
22 violative of the principles of Rule 8. Plaintiff also argues that F.R.C.P. Rule 9 must be considered as
23 well as the Court’s prior determination that this case deserves judgement on the merits.
24

25 **F.R.C.P Rule 9’s Justifies Length and Details**

26
27 Plaintiff believes the complaint must be considered and adhere to the primary requirements of
28 F.R.C.P. Rule 9, and that the rule at least partially justifies its scope, length, and detailed account.

1 **Complexity of Case Justifying Detail:** Rule 9 acknowledges that certain aspects of a case, such as
2 allegations of fraud (Rule 9(b)) or special damages (Rule 9(g)), require specific and detailed
3 statements. Given the extent of misconduct spanning four years, involving 60 defendants, and
4 multiple causes of action, the level of detail in the complaint is appropriate to clearly articulate the
5 specific nature of the allegations. This complexity necessitates a comprehensive narrative to
6 sufficiently describe the circumstances constituting fraud or mistake, as well as any special damages
7 claimed.
8

9 **Efficiency in Pleading Special Matters:**
10

11 a. Fraud or Mistake (Rule 9(b)): The complaint's detailed nature fulfills the requirement to
12 state with particularity the circumstances constituting fraud or mistake. Given the large
13 number of defendants and the extended timeframe, detailed factual allegations are necessary
14 to provide clarity and specificity.
15

16
17 b. Special Damages (Rule 9(g)): In cases where special damages are claimed, they must be
18 specifically stated and clearly articulated, meeting the specificity requirement of Rule 9(g).
19

20 **Compliance with Other Provisions of Rule 9:**

21 Capacity or Authority to Sue (Rule 9(a)): The complaint likely addresses the capacity or authority to
22 sue as needed, ensuring compliance with Rule 9(a).
23

24 Conditions Precedent (Rule 9(c)): The general allegation that all conditions precedent have been
25 met is likely included, aligning with the requirements of Rule 9(c).
26
27
28

1 Time and Place (Rule 9(f)): Detailed allegations of time and place are essential in a case covering a
2 long duration and involving numerous parties. This aligns with Rule 9(f), which considers time and
3 place allegations as material.

4
5 Rule 9's Flexibility in Complex Cases: While Rule 9 requires particularity in certain circumstances,
6 it also allows for general allegations in others (such as conditions of mind).

7 Here, Plaintiff asserts the complaint's length and detailed nature are in line with the requirements of
8 Rule 9, especially considering the complexity of the case, the number of parties involved, and the
9 nature of the allegations.
10

11 **D. Challenging the Request for Sanctions**

12 The Plaintiff counters the Defendant's previous call for sanctions, which he contends also includes
13 the multiple requests for dismissal with prejudice, arguing that such requests are unwarranted and
14 distract from the substantive legal issues central to the case. Here, where the underlying facts are
15 simple to ascertain and the Defendants do not claim actual harm, dismissal with prejudice seems
16 extreme and unjust.
17

18 In effect, the Defendants seem to request sanctions on the basis that they have been sued for cause
19 and the Plaintiff seeks just adjudication of the matter given Defendants clear unwillingness to cure.
20

21 Here, where the exhibits supplied by the SAC themselves clearly indicate the existence of issues of
22 concern and active controversy, Defendant's arguments appear willfully blind to the facts and tone
23 deaf to the record.
24

25 **Conclusion and Request for Relief**

26 The Plaintiff reiterates the sufficiency and validity of his claims and pleadings.
27
28

1 The Plaintiff respectfully requests the court to deny the Defendant's motion(s) and to give due
2 consideration to the merits and substance of the Plaintiff's SAC. Plaintiff asks the Court to deny the
3 motion and order the Defendant's timely response given that Mr. Spiro, a licensee and co-defendant,
4 has already demonstrated an ability to do so.
5

6 **Alternative Request in Case Court Leans Towards Dismissal: Leave to Amend**

7 A Plaintiff can generally file an amendment before a Defendant's responsive pleading. A motion to
8 dismiss is not a 'responsive pleading' within the meaning of the Rule. Neither the filing nor granting
9 of such a motion before answer terminates the right to amend; an order of dismissal denying leave
10 to amend at that stage is improper." Schreiber Distributing v. Serv-Well Furniture Co., 806 F.2d
11 1393, 1401 (9th Cir. 1986). F.R.C.P. Rule 12(e) may be more efficient to apply here as well.
12

13 In dismissing for failure to state a claim, "a district court should grant leave to amend even if no
14 request to amend the pleading was made, unless it determines that the pleading could not possibly
15 be cured by the allegation of other facts." Cook, Perkiss Liehe v. N. Cal. Collection Service, 911
16 F.2d 242, 247 (9th Cir. 1990). As in Schreiber, the record here contains "no indication of such a
17 determination." See also Bonanno v. Thomas, 309 F.2d 320, 322 (9th Cir. 1962). In fact, the district
18 court provided no justification for its dismissal of Doe's tort claims at all. "Because the district court
19 did not determine, nor can we conclude, that the allegation of other facts could not possibly cure the
20 deficiencies in [Doe's] complaint, the district court abused its discretion in dismissing [the
21 complaint] with prejudice." Schreiber, 806 F.2d at 1401.
22

23
24 Plaintiff suggests that Defendants response to the SAC is reasonable and offers a more efficient path
25 to resolution of this matter. Here, Plaintiff argues that given the evidence that these particular
26 Defendants have been long aware of the issues, in some cases by express notice by regulatory
27 entities, their failure to request a "more definitive statement" as allowed by F.R.C.P. Rule 12(e)
28

1 suggests that their sole invocation of F.R.C.P. 12(b)(6) in this context, (e.g., first notice, no prior
2 response given to this or earlier pleadings, individuals are licensees or in possession of advanced
3 legal training engaged in the operation of a law school) is for realization of unfair advantage.
4
5 Combined with the failure to demonstrate how the SAC presents undue or unfair burden to the
6 individual in relationship to their specific response, strong inference for denial of the motion in this
7 circumstance is likely warranted.

8 9 **Plaintiff's Proof of Service**

10 This section confirms that all necessary documents will be properly served pursuant to L.R. 5-3.2.1
11 Service. This document will be/has been electronically filed. The electronic filing of a document
12 causes a "Notice of Electronic Filing" ("NEF") to be automatically generated by the CM/ECF
13 System and sent by e-mail to: (1) all attorneys who have appeared in the case in this Court and (2)
14 all pro se parties who have been granted leave to file documents electronically in the case pursuant
15 to L.R. 5-4.1.1 or who have appeared in the case and are registered to receive service through the
16 CM/ECF System pursuant to L.R. 5-3.2.2. Unless service is governed by F.R.Civ.P. 4 or L.R. 79-
17 5.3, service with this electronic NEF will constitute service pursuant to the Federal Rules of Civil
18 Procedure, and the NEF itself will constitute proof of service for individuals so served.
19
20

21 **Affirmation of L.R. 11-6.1 Compliance**

22
23 "The undersigned, Todd Hill, a pro se litigant, certifies that this brief contains 6,962 words, which
24 complies with the word limit of L.R. 11-6.1.

25
26 April 9, 2024

27
28 Todd R. G. Hill